

Fit Notes – ‘is not fit’ or ‘may be fit’

The *Social Security (Medical Evidence)* and the *Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2010* are now in force.

The effect is the introduction of a new system for sickness absence reporting, which changes the format of medical statements – formerly known as ‘sick notes’.

New System

Under the new system Doctors must provide a statement of fitness or ‘**fit note**’ which will (amongst other thing) advise whether the patient is either:

- ‘unfit for work’; or
- ‘may be fit for work taking account of the following advice’.

If a doctor makes a ‘may be fit for work’ statement then s/he will list temporary changes which could be made to an employee’s environment or job role to help facilitate a return to work. This may include, for example, a phased return to work, altered hours, amended duties or workplace adaptations.

The new system is not about trying to get people back to work before they are ready, it is designed to help reduce the level of sickness absence by assisting individuals to avoid long-term absence and unemployment, assist employers to retain skilled and knowledgeable staff and also relieve the financial burden of providing sickness cover.

What are the implications for employers?

If you are given a fit note which states ‘may be fit for work taking account of the following advice’, then you will need to look very carefully at how you manage sickness absence.

The doctor will list temporary changes to be made to an individual’s environment or job role in order to facilitate the individual’s return to work.

Will you be forced to make costly adjustments to accommodate someone who six weeks later may be perfectly fit?

The answer is ‘no’. The Government has stressed that if the adjustments are too costly, unworkable or simply not worth the trouble, the terms of the fit note are not binding on you and you simply treat the Doctors note as ‘not fit for work’. This also applies where an employee resumes work and subsequently finds that s/he can’t manage it.

Whilst you do not have to act upon a doctor’s recommendations where they have advised that an employee ‘may be fit for work’, it will probably be in your interest to make simple and practical adjustments to facilitate the individual’s return to work, as it will not only reduce unnecessary sickness absence but it may also reduce the risk of a claim for disability discrimination.

It is important to note that your obligations to pay statutory sick pay and make reasonable adjustments under the Disability Discrimination Act 1995 will not change.